

UIdaho Law Digital Commons @ UIdaho Law

Not Reported

Idaho Supreme Court Records & Briefs

8-9-2016

State v. Melena Respondent's Brief Dckt. 43665

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Melena Respondent's Brief Dckt. 43665" (2016). *Not Reported*. 2874.
https://digitalcommons.law.uidaho.edu/not_reported/2874

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

LORI A. FLEMING
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43665
Plaintiff-Respondent,)	
)	Jerome County Case No.
v.)	CR-2015-265
)	
EDER MELENA,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Melena failed to establish that the district court abused its discretion by imposing a unified sentence of five years, with one year fixed, upon the jury's verdict finding him guilty of felony eluding a peace officer?

Melena Has Failed To Establish That The District Court Abused Its Sentencing Discretion

A jury found Melena guilty of felony eluding a peace officer and the district court

imposed a unified sentence of five years, with one year fixed, and retained jurisdiction.¹ (R., pp.242-49.) Melena filed a notice of appeal timely from the judgment of conviction. (R., pp.253-57.)

Melena asserts his sentence is excessive in light of his status as a first-time felon, work history, and purported remorse. (Appellant's brief, pp.3-5.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

¹ The jury also found Melena guilty of the misdemeanor crimes of exhibition and/or use of a deadly weapon, DWP, and resisting and/or obstructing officers; however, Melena is not challenging his sentences for the misdemeanor convictions on appeal. (R., pp.242-49; Appellant's brief, p.3.)

The maximum prison sentence for felony eluding a peace officer is five years. I.C. §§ 18-112, 49-1404(2). The district court imposed a unified sentence of five years, with one year fixed, which falls well within the statutory guidelines. (R., pp.242-49.) At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth its reasons for imposing Melena's sentence. (9/14/15 Tr., p.312, L.21 – p.315, L.22.) The state submits that Melena has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

Conclusion

The state respectfully requests this Court to affirm Melena's conviction and sentence.

DATED this 9th day of August, 2016.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 9th day of August, 2016, served a true and correct copy of the attached RESPONDENTS BRIEF by emailing an electronic copy to:

REED P. ANDERSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

<p>1 as you know from the PSI, has a \$1,200 a month 2 income. That's not much income. Obviously, he 3 qualified for the public defender, so we would 4 simply ask that you take that into consideration as 5 well.</p> <p>6 Eder is employed, Judge. He's worked at 7 the Jack Berry dairy since the 2nd of January 2015, 8 and he worked for Extreme Fire Protection from 2008 9 to 2014. As I said, he has a wife, Claudia. He has 10 a family that he cares about and a family that he 11 knows he has to wake up and -- wake up and take care 12 of, and he has to grow up and take care of them. 13 Thank you, Your Honor.</p> <p>14 THE COURT: Thank you.</p> <p>15 Mr. Melena, anything you wish to share 16 with the Court?</p> <p>17 THE DEFENDANT: Well, give me a chance. I'll 18 be a good boy. And, actually, my wife is pregnant. 19 I need to work for my family, and that's it.</p> <p>20 THE COURT: All right. Thank you. All right. 21 The Court, for purposes of sentencing, does consider 22 the four goals of sentencing. Certainly, protection 23 of society is this Court's primary concern, although 24 the Court does consider the related goals of 25 rehabilitation, retribution, and deterrence. The</p> <p style="text-align: center;">312</p>	<p>1 Court also does consider those factors under 19-2521 2 to determine whether probation or some form of 3 incarceration is appropriate. The Court does 4 consider the character of the offender, the nature 5 of the underlying offense, as well as the 6 defendant's prior record.</p> <p>7 The Court has reviewed in detail the 8 presentence investigation report in this matter. 9 The Court notes the errors that were contained 10 within the report because, certainly, the Court had 11 dismissed the destruction of evidence, the felony 12 charge, as well as the possession of a concealed 13 weapon under the influence. Those counts are not 14 considered by the Court for purposes of sentencing 15 in this matter, and it does not appear that those 16 counts would have been calculated in terms of the 17 defendant's LSI score.</p> <p>18 However, the Court does recognize the 19 seriousness of this offense. Certainly, with the 20 exhibition and use of a weapon, the testimony at 21 trial indicates that there, in fact, was a weapon in 22 the vehicle, that that weapon was discharged, and 23 the jury did find that it was the defendant who 24 exhibited or used the weapon at the time of this 25 offense.</p> <p style="text-align: center;">313</p>
<p>1 There was then a -- the felony eluding 2 charge where the jury did find beyond a reasonable 3 doubt that Mr. Melena was the driver of the vehicle. 4 Certainly, the evidence demonstrated that the 5 actions of Mr. Melena, in the operation of his motor 6 vehicle, running through red lights, placed other 7 persons and property in danger.</p> <p>8 The Court is, Mr. Melena, troubled in 9 some respects because, certainly, your attorney did 10 feel that -- or did indicate that you had stated in 11 the PSI as to how you feel about having committed 12 the crime, and you did say you felt dumb, selfish, 13 irresponsible, mad, and sad. However, before that, 14 you denied any responsibility for the commissions of 15 the crime for which the jury found you guilty, so 16 I'm not sure what you feel dumb about, what you feel 17 selfish about, what you feel irresponsible about, 18 what you feel mad about, or what you feel sad about.</p> <p>19 There's also a further comment from you 20 in the PSI that, in effect, states, quote, "I am 21 innocent and sorry for the trouble I caused." If 22 you're innocent, again, I'm not sure what trouble 23 you're sorry for having caused. These are serious 24 offenses. The discharge of a weapon, the eluding of 25 the peace officers clearly indicate that you're</p> <p style="text-align: center;">314</p>	<p>1 willing to put the lives and risks of others at 2 risk.</p> <p>3 The Court does believe at this point in 4 time -- and I understand why probation and parole 5 feel you're a marginal candidate for community 6 supervision because, certainly, the evidence does 7 suggest that you don't respect the rights of others.</p> <p>8 There's also some indication from the 9 testimony at trial that family members, perhaps, are 10 not willing to hold you accountable for your own 11 behavior, and certainly, the Court was troubled by 12 the testimony of your father. And, frankly, the 13 Court does not know why your father was called as a 14 witness in this matter.</p> <p>15 However, the Court does believe that the 16 retained jurisdiction program would impose the 17 appropriate punishment. The Court does believe that 18 granting probation at this stage would depreciate 19 the seriousness of the crimes for which the jury 20 found you guilty, so as to the charge in Count I, 21 exhibition or use of a weapon, the Court will impose 22 total court costs. The Court will impose a fine of 23 \$250. The Court will impose county jail time of 24 180 days. Credit for time served is two days 25 calculated from January 11th to January 12th.</p> <p style="text-align: center;">315</p>